

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

TOMS KING (OHIO) LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-50001 (AMK)
) (Jointly Administered)
)
) Judge Alan M. Koschik
)

**PROPOSED AGENDA FOR HEARING ON MOTIONS SCHEDULED FOR
JANUARY 31, 2023 AT 10:00 A.M. (ET) (PREVAILING EASTERN TIME)**

I. UNCONTESTED MATTERS WITH ORDERS:

1. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief (Doc. 9)

Objections/Responses Received: None.

Related Document:

- A. Interim Order (I) Authorizing, But Not Directing, the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief (Doc. 62)

Status: This motion is unopposed, and a Final Order has been submitted.

2. Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Allen Stovall Neuman & Ashton LLP as Co-Counsel for the Debtors and Debtors in Possession Pursuant to § 327(a) of the Bankruptcy Code (Doc. 142)

Objections/Responses Received: None.

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's U.S. taxpayer identification number, are: TOMS King (Ohio) LLC (9126); TOMS King LLC (4221); TOMS King (Illinois) LLC (9171); TOMS King (Penn.) LLC (7148); TOMS King (Virginia) LLC (8226); TOMS King (Ohio II) LLC (4081) and TOMS King III LLC (No EIN Number). The Debtors' corporate headquarters is located at 220 N. Smith Street, Suite 305, Palatine, IL 60067.

Status: This motion is unopposed, and a Final Order has been submitted.

II. UNCONTESTED MATTERS WITH MODIFIED ORDERS:

3. Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief (Doc. 15)

Objections/Responses Received:

- i. Informal comments from the Official Committee of Unsecured Creditors (the Committee)
- ii. Informal comments from Bank of America ("BOA")

Related Documents:

- A. Interim Order (I) Authorizing Interim Use of Cash Collateral, (II) Granting Adequate Protection and Related Relief and (III) Scheduling a Final Hearing (Doc. 60)
- B. Notice of Filing of Revised Proposed Order (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief (Doc. 198)

Status: The Debtors received informal comments from the Committee and BOA. The Debtors resolved the informal comments and have filed a proposed revised final order for the Court's consideration at the Hearing.

4. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Honor and Continue Pre-Petition Practices with Certain Critical Vendors; (II) Authorizing the Payment of Prepetition Claims Arising Under the Perishable Agricultural Commodities Act and the Packers and Stockyards Act of 1921, and (III) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing (Doc. 14)

Objections/Responses Received:

- i. Informal comments from the Office of the United States Trustee for the Northern District of Ohio (the "U.S. Trustee")
- ii. Informal comments from the Committee
- iii. Informal comments from Burger King Company LLC ("Burger King")

Related Documents:

- A. Interim Order (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and Prepetition Claims Arising Under the Perishable Agricultural Commodities Act and the Packers and Stockyards Act of 1921, and (II) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing (Doc. 69)
- B. Declaration of Daniel F. Dooley in Support in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Honor and Continue Pre-Petition Practices with Certain Critical Vendors; (II) Authorizing the Payment of Prepetition Claims Arising Under the Perishable Agricultural Commodities Act and the Packers and Stockyards Act of 1921, and (III) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing (Doc. 181)
- C. Notice of Filing of Revised Proposed Order (I) Authorizing the Debtors to Honor and Continue Pre-Petition Practices with Certain Critical Vendors; (II) Authorizing the Payment of Prepetition Claims Arising Under the Perishable Agricultural Commodities Act and the Packers and Stockyards Act of 1921, and (III) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing (Doc. 192)

Status: The Debtors received informal comments from the U.S. Trustee, the Committee and Burger King. The Debtors resolved the informal comments through the filing of the Supplement Declaration (Doc. 181) and have filed a proposed revised final order for the Court's consideration at the Hearing.

- 5. Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Continue to Operate Their Cash Management System (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Granting Related Relief (Doc. 13)

Objections/Responses Received:

- i. Informal comments from the Committee
- ii. Informal comments from BOA

Related Documents:

- A. Interim Order (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform

Intercompany Transactions and Non-Debtor Affiliate Transactions, and (III) Granting Related Relief (Doc. 63)

- B. Notice of Filing of Revised Proposed Order (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions and Non-Debtor Affiliate Transactions, and (III) Granting Related Relief (Doc. 191)

Status: The Debtors received informal comments from the Committee and BOA. The Debtors resolved the informal comments and have filed a proposed revised final order for the Court's consideration at the Hearing.

- 6. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, The Debtors to (A) Pay Their Obligations Under Insurance Policies Entered into Prepetition, and (B) Renew, Supplement, Modify, or Purchase Insurance Coverage and Pay Premiums Thereunder; and (II) Granting Related Relief (Doc. 11)

Objections/Responses Received:

- i. Informal comments from BOA

Related Documents:

- A. Interim Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered into Prepetition, and (B) Renew Supplement, Modify, or Purchase Insurance Coverage and Pay Premiums Thereunder; and (II) Granting Related Relief (Doc. 68)
- B. Notice of Filing of Revised Proposed Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered into Prepetition, and (B) Renew Supplement, Modify, or Purchase Insurance Coverage and Pay Premiums Thereunder; and (II) Granting Related Relief (Doc. 193)

Status: The Debtors received informal comments from BOA. The Debtors resolved the informal comments and have filed a proposed revised final order for the Court's consideration at the Hearing.

- 7. Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief (Doc. 10)

Objections/Responses Received:

- i. Informal comments from Waste Management
- ii. Informal comments from City of Woodstock, Illinois
- iii. **(Withdrawn)** Objection of Certain Utility Companies to the Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief (Doc. 149)

Related Documents:

- A. Interim Order (I) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief (Doc. 67)
- B. Notice of Filing of Revised Proposed Order (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief (Doc No. 195)

Status: The Debtors have received informal comments from Waste Management and the City of Woodstock, Illinois and the filed objection of Certain Utility Companies. The Debtors resolved the informal comments and have filed a proposed revised final order for the Court's consideration at the Hearing.

- 8. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, and Other Compensation, and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (Doc. 12)

Objections/Responses Received:

- i. Informal comments from the Committee

Related Documents:

- A. Interim Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, and other Compensation and

(B) Continue Employee Benefits Programs, and (II) Granting Related Relief (Doc. 61)

- B. Notice of Filing of Revised Proposed Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, and other Compensation and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (Doc. 196)

Status: The Debtors received informal comments from the Committee. The Debtors resolved the informal comments and have filed a proposed revised final order for the Court's consideration at the Hearing.

9. Application of the Debtors for an Order Under 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 2016, and Ohio Bankr. L.R. 2016-1 Authorizing and Approving the Employment and Retention of Womble Bond Dickinson (US) LLP as Counsel *Nunc Pro Tunc* to the Petition Date (Doc. 134)

Objections/Responses Received:

- i. Informal comments from the U.S. Trustee
- ii. Informal comments from BOA

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)
- B. Supplemental Declaration of Matthew P. Ward in Support of the Debtors for an Order Under 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 2016, and Ohio Bankr. L.R. 2016-1 Authorizing and Approving the Employment and Retention of Womble Bond Dickinson (US) LLP as Counsel *Nunc Pro Tunc* to the Petition Date (Doc. 160)
- C. Notice of Filing of Revised Proposed Under 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 2016, and Ohio Bankr. L.R. 2016-1 Authorizing and Approving the Employment and Retention of Womble Bond Dickinson (US) LLP as Counsel *Nunc Pro Tunc* to the Petition Date (Doc No. 199)

Status: The Debtors received informal comments from the U.S. Trustee and BOA. The Debtors resolved the informal comments through the filing of the Supplement Declaration (Doc. 181) and have filed a proposed revised final order for the Court's consideration at the Hearing.

10. Motion of the Debtors Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to (I) Retain and Compensate MorrisAnderson & Associates, Ltd. to Provide the Debtors a Chief Restructuring Officer and Certain Additional Personnel, and (II) Designate Daniel F. Dooley as Debtors' Chief Restructuring Officer (Doc. 139)

Objections/Responses Received:

- i. Informal comments from the U.S. Trustee

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)
- B. Supplemental Declaration of Daniel F. Dooley in Support of the Motion of the Debtors Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to (I) Retain and Compensate MorrisAnderson & Associates, Ltd. to Provide the Debtors a Chief Restructuring Officer and Certain Additional Personnel, and (II) Designate Daniel F. Dooley as Debtors' Chief Restructuring Officer (Doc.177).
- C. Notice of Filing of Revised Proposed Order Authorizing the Debtors Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to (I) Retain and Compensate MorrisAnderson & Associates, Ltd. to Provide the Debtors a Chief Restructuring Officer and Certain Additional Personnel, and (II) Designate Daniel F. Dooley as Debtors' Chief Restructuring Officer (Doc No. 200)

Status: The Debtors received informal comments from the U.S. Trustee which comments have been addressed through the filing of the Supplement Declaration (Doc. 177) and have filed a proposed revised final order for the Court's consideration at the Hearing.

11. Debtors' Application for Entry of an Order Authorizing the Retention and Employment of ReInvest Capital, LLC as Investment Banker to the Debtors, *Nunc Pro Tunc* to the Petition Date (Doc. 136)

Objections/Responses Received:

- i. Limited Omnibus Objection of the Official Committee of Unsecured Creditors to (I) Debtors' Application to Retain and Employ ReInvest Capital, LLC as Investment Banker and (II) Debtors' Application to Retain and Employ A&G Realty Partners, LLC as Real Estate Consultant (Doc. 182)
- ii. Limited Objection of the United States Trustee to Debtors Application for Entry of an Order Authorizing the Retention and Employment of ReInvest

Capital, LLC as Investment Banker to the Debtors, *Nunc Pro Tunc* to the Petition Date (Doc. 186)

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)
- B. Notice of Filing of Revised Proposed Order Authorizing the Retention and Employment of ReInvest Capital, LLC as Investment Banker to the Debtors, *Nunc Pro Tunc* to the Petition Date (Doc No. 201)

Status: The Debtors believe they have resolved the limited objections of the Committee and the U.S. Trustee and intend to file a proposed revised final order for the Court's consideration at the Hearing.

- 12. Debtors' Application for Entry of an Order Authorizing the Retention and Employment of A&G Realty Partners, LLC as a Real Estate Consultant and Advisor to the Debtors, *Nunc Pro Tunc* to the Petition Date (Doc. 135)

Objections/Responses Received:

- i. Informal comments from BOA
- ii. Informal comments from the Committee

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)

Status: The Debtors received informal comments from BOA and the Committee. The Debtors believe they have resolved the informal comments and intend to file a proposed revised final order for the Court's consideration at the Hearing.

- 13. Debtors' Application for Entry of an Order Approving the Employment and Retention of Omni Agent Solutions, Inc. as Administrative Advisor for the Debtors, Effective *Nunc Pro Tunc* to the Petition Date (Doc. 137)

Objections/Responses Received:

- i. Informal comments from the U.S. Trustee

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)

Status: The Debtors received informal comments from the U.S. Trustee. The Debtors believe they have resolved the informal comments and intend to file a proposed revised final order for the Court's consideration at the Hearing.

14. Motion of Debtors for Entry of an Order (I) Authorizing Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business; and (II) Granting Related Relief (Doc. 141)

Objections/Responses Received:

- i. Informal comments from BOA
- ii. Informal comments from the Committee

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)
- B. Notice of Filing of Revised Proposed Order (I) Authorizing Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business; and (II) Granting Related Relief (Doc No. 202)

Status: The Debtors received informal comments from BOA and the Committee. The Debtors resolved the informal comments and have filed a proposed revised final order for the Court's consideration at the Hearing.

15. Motion of Debtors for Entry of an Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals on a Monthly Basis and (II) Limiting Service of Notices of Hearings on Interim Applications for Compensation (Doc. 133)

Objections/Responses Received:

- i. Informal comments from BOA
- ii. Informal comments from the Committee

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)

Status: The Debtors received informal comments from BOA and the Committee. The Debtors believe they have resolved the informal comments and intend to file a proposed revised final order for the Court's consideration at the Hearing.

16. Debtors' Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Unexpired Leases of Nonresidential Real Property and Abandonment of Any Remaining Property in Connection Therewith Effective as of the Petition Date, (II) Authorizing the Rejection of Certain Executory Contracts Effective as of the Petition Date, and (III) Approving Procedures for the Rejection of Executory Contracts and Unexpired Leases (Doc. 22)

Objections/Responses Received:

- i. Informal comments from Ballard (the "Landlord")
- ii. Informal comments from the Committee

Related Documents:

- A. Notice of Debtors' Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Unexpired Leases of Nonresidential Real Property and Abandonment of Any Remaining Property in Connection Therewith Effective as of the Petition Date, (II) Authorizing the Rejection of Certain Executory Contracts Effective as of the Petition Date, and (III) Approving Procedures for the Rejection of Executory Contracts and Unexpired Leases (Doc. 76)
- B. Notice of Filing of Revised Proposed Order (I) Authorizing the Rejection of Certain Unexpired Leases of Nonresidential Real Property and Abandonment of Any Remaining Property in Connection Therewith Effective as of the Petition Date, (II) Authorizing the Rejection of Certain Executory Contracts Effective as of the Petition Date, and (III) Approving Procedures for the Rejection of Executory Contracts and Unexpired Leases (Doc. 194)

Status: The Debtors received informal comments from the Landlord and the Committee. The Debtors resolved the informal comments and have filed a proposed revised final order for the Court's consideration at the Hearing.

III. CONTESTED MATTERS GOING FORWARD:

17. Debtors' Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance Therewith, and (III) Granting Related Relief (Doc. 109)

Objections/Responses Received:

- i. Informal comments from the Committee

- ii. Objection of the United States Trustee to the Debtors' Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance Therewith, and (III) Granting Related Relief (Doc. 171)
- iii. Burger King Company LLC's Limited Objection to Debtors' Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance Therewith, and (III) Granting Related Relief (Doc. 174)

Related Documents:

- A. Declaration of Daniel F. Dooley in Support of Debtors' Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees In Accordance Therewith, and (III) Granting Related Relief (Doc. 110)
- B. Notice of Debtors' Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance Therewith, and (III) Granting Related Relief (Doc. 113)
- C. Notice of Filing of Unsealed Exhibit B to Notice of Debtors' Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance Therewith, and (III) Granting Related Relief (Doc No. 185)
- D. Notice of Filing of Revised Proposed Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance Therewith, and (III) Granting Related Relief (Doc No. 197)
- E. Supplemental Declaration of Daniel F. Dooley in Support of Debtors' Motion for Entry of an Order (I) Approving the Terms of a Key Employee Incentive Plan, (II) Authorizing Payments to Key Employees in Accordance Therewith, and (III) Granting Related Relief (Doc No. 205)

Status: The Debtors have resolved the informal comment from the U.S. Trustee and the objection of the Committee. The hearing on this matter is going forward regarding the limited objection of Burger King Company, LLC. The hearing on this matter is going forward.

18. Debtors Motion for Entry of an Order (I) Approving the Bidding Procedures; (II) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Related Notices; (III) Scheduling the Bid Deadline, the Auction and Sale Hearing; (IV) Approving the Form and Manner of Notice thereof; and (V) Granting Related Relief (Doc. 140)

Objections/Responses Received:

- i. Informal comments from the Committee
- ii. Informal comments from BOA
- iii. Burger King Company LLC's Objection to Debtors' Motion for Entry of an Order (I) Approving the Bidding Procedures; (II) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Related Notices; (III) Scheduling the Bid Deadline, the Auction and Sale Hearing; (IV) Approving the Form and Manner of Notice thereof; and (V) Granting Related Relief (Doc. 188)
- iv. Objection of Federal Realty Partners L.P., Formerly Kingstowne Shopping Center I L.P. to Debtors Motion for Entry of an Order (I) Approving the Bidding Procedures; (II) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Related Notices; (III) Scheduling the Bid Deadline, the Auction and Sale Hearing; (IV) Approving the Form and Manner of Notice Thereof; and (V) Granting Related Relief (Doc No. 204)

Related Documents:

- A. Omnibus Notice of Motions and Applications of Debtors (Doc. 143)

Status: The hearing on this matter is going forward.

IV. ADJOURNED MATTER

19. Debtors' Motion for Entry of an Order Authorizing the Assumption of Management Service Agreement (Doc. 112)

Objections/Responses Received:

Related Documents:

Status: The hearing on this motion has been adjourned until the next scheduled hearing date of February 14, 2023 at 10:00 a.m. (ET). The objection deadline for the U.S. Trustee, the Committee and Burger King is extended until February 3, 2023 at 4:00 p.m. (ET)

Dated: January 30, 2023

/s/ Richard K. Stovall

ALLEN STOVALL NEUMAN & ASHTON LLP

Thomas R. Allen (0017513)

Richard K. Stovall (0029978)

James A. Coutinho (0082430)

10 W. Broad St., Ste. 2400

Columbus, Ohio 43215

Telephone: (614) 221-8500

Facsimile: (614) 221-5988

Email: allen@ASNAlaw.com

stovall@ASNAlaw.com

coutinho@ASNAlaw.com

- and -

WOMBLE BOND DICKINSON (US) LLP

Matthew P. Ward, Admitted *Pro Hac Vice*

Ericka F. Johnson, Admitted *Pro Hac Vice*

Morgan L. Patterson, Admitted *Pro Hac Vice*

Todd A. Atkinson (0077374)

William D. Curtis, Admitted *Pro Hac Vice*

1313 North Market Street, Suite 1200

Wilmington, Delaware 19801

Telephone: (302) 252-4320

Facsimile: (302) 252-4330

Email: matthew.ward@wbd-us.com

ericka.johnson@wbd-us.com

morgan.patterson@sbd-us.com

todd.atkinson@wbd-us.com

will.curtis@wbd-us.com

*Proposed Counsel to the Debtors and
Debtors in Possession*